

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ADVANCED HAIR RESTORATION LLC,

Plaintiff,

v.

BOSLEY INC, et al.,

Defendants.

CASE NO. C23-1031-KKE

ORDER ON JOINT DISCOVERY
STATEMENT

This matter comes before the Court on the parties' July 11, 2024, joint statement of discovery dispute. Dkt. No. 76. Plaintiff Advanced Hair Restoration LLC ("AHR") seeks leave to file a motion to compel Defendant Bosley Inc. ("Bosley") to respond to AHR's first set of interrogatories. *Id.* AHR argues Bosley failed to adequately answer the interrogatories by (1) "refusing to answer Interrogatories Nos. 10–15, instead labeling AHR's 15 interrogatories as 381 interrogatories without explanation[;]" (2) improperly objecting based on relevance to interrogatories 3, 5, 8–10; (3) answering interrogatories 1, 2, 6–9 based on an unreasonable interpretation of "adopt"; and (4) objecting based on privilege to interrogatories 4, 5, 8, and 10. *Id.* at 2–3. In response, Bosley disagrees with each of AHR's positions but does agree to "amend its answer[s] regarding any asserted marks at issue in the Second Amended Complaint." *Id.* at 3. As of the date of the court conference, July 30, 2024, Bosley had not amended the answers. *See* Dkt. No. 79.

1 This Order will address only the first area of dispute, namely, which of AHR's
2 interrogatories include distinct subparts such that the interrogatory should be counted as more than
3 one under Federal Rule of Civil Procedure 33(a)(1). As for the areas of dispute not addressed by
4 this Order, the parties are instructed to meet and confer again and, if issues remain, either party
5 may file a discovery motion without again participating in the Court's pre-filing conference
6 procedure.

7 Under Federal Rule of Civil Procedure 33 "a party may serve on any other party no more
8 than 25 written interrogatories, including all discrete subparts." Fed. R. Civ. P. 33(a)(1). This
9 means that the court counts "discrete subparts" within an interrogatory as separate interrogatories
10 when determining whether a party has exceeded the 25-interrogatory limit. *Id.* "Although the
11 term 'discrete subparts' [in Rule 33] does not have a precise meaning, courts generally agree that
12 'interrogatory subparts are to be counted as one interrogatory ... if they are logically or factually
13 subsumed within and necessarily related to the primary question.'" *Trevino v. ACB Am., Inc.*, 232
14 F.R.D. 612, 614 (N.D. Cal. 2006) (quoting *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 445 (C.D.
15 Cal. 1998)). For example, "a question asking about communications of a particular type should
16 be treated as a single interrogatory even though it requests that the time, place, persons present,
17 and contents be stated separately for each such communication." Fed. R. Civ. P. 33(a)(1) advisory
18 committee note (1993 amendments). But "once a subpart of an interrogatory introduces a line of
19 inquiry that is separate and distinct from the inquiry made by the portion of the interrogatory that
20 precedes it, the subpart must be considered a separate interrogatory no matter how it is designated."
21 *Rabel v. Univ. of Wash. Med. Ctr.*, No. C23-0083JLR, 2024 WL 197370, at *4 (W.D. Wash. Jan.
22 18, 2024) (quoting *Willingham v. Ashcroft*, 226 F.R.D. 57, 59 (D.D.C. 2005)).

1 Based on this guidance, the Court finds the interrogatories should be counted as follows.¹

2 Interrogatory 1 asks Bosley to identify the person most familiar with five aspects of
3 Bosley's use of the term ADVANCED HAIR TRANSPLANT: "advertising and promotion,"
4 "sales," "gross receipts and profits from" sales, "the decision to adopt the phrase," and "internet
5 search results." Dkt. No. 76-1 at 5. These subparts include two distinct areas, finances and
6 marketing, and will count as two interrogatories.

7 Interrogatories 2 through 7 are single interrogatories. *See* Dkt. No. 76-1 at 7–16. It is not
8 a distinct question to ask Bosley to list the relevant individuals involved with the topic of each
9 interrogatory.

10 Interrogatory 8 asks about the "date and circumstances of Defendant first becoming aware
11 of Plaintiff's use of" six phrases. Dkt. No. 76-1 at 18. Each phrase is its own inquiry, and this
12 interrogatory is appropriately counted as six interrogatories.

13 Like interrogatory 8, interrogatory 10 asks Bosley to "identify and describe any non-
14 privileged communications between Defendant and any third-party regarding Plaintiff" and six
15 phrases. Dkt. No. 76-1 at 21. Again, each phrase is its own inquiry, and this interrogatory is
16 appropriately counted as six interrogatories.

17 Interrogatory 12 asks for instances of confusion between ADVANCED HAIR or
18 ADVANCED HAIR RESTORATION and THE WORLD'S MOST EXPERIENCED HAIR
19 RESTORATION EXPERT and THE ART AND SCIENCE OF HAIR RESTORATION. Dkt. No.
20 76-1 at 24–25. Comparing each set of words is four inquiries, thus interrogatory 12 counts as four
21 interrogatories.

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24 ¹ The parties agree interrogatories 9 and 11 are each one interrogatory. Dkt. No. 76-1 at 20, 23.

1 This is twenty-six interrogatories, one more than allowed under Federal Rule of Civil
2 Procedure 33(a)(1). Accordingly, it is appropriate for Bosley to object to the last section of
3 interrogatory 12, the confusion between ADVANCED HAIR RESTORATION and THE ART
4 AND SCIENCE OF HAIR RESTORATION, and the remaining interrogatories. But Bosley
5 cannot object to interrogatories 10, 11, or the first three parts of 12, based on exceeding the limit
6 of interrogatories and must amend its answers to respond to these interrogatories.

7 While interrogatories 13 through 15 exceed the limits of Rule 33(a)(1) and Bosley need
8 not answer them at this time, in order to provide guidance to the parties in the hope of avoiding
9 future disputes, the Court will address the numerical objections to these interrogatories as well.

10 Interrogatory 13 asks Bosley to “identify and describe the facts supporting” each of
11 Bosley’s denials of AHR’s requests for admission. Dkt. No. 76-1 at 26. In response, Bosley
12 represents that it denied at least part of 19 of the RFAs. *Id.* Accordingly, the Court finds AHR’s
13 interrogatory 13 should count as 19 interrogatories. *See Jovanovich v. Redden Marine Supply,*
14 *Inc.*, No. C10-924-RSM, 2011 WL 4459171, at *3 (W.D. Wash. Sept. 26, 2011) (“Given that
15 interrogatories are numerically limited, whereas requests for admission are not, it would be
16 inequitable to allow a party to effectively use a combination of requests for admission and a single
17 interrogatory to obtain discovery information.”).

18 Interrogatory 14 asks Bosley to identify “each individual furnishing the information used
19 in the response” to each interrogatory, “each individual consulted in formulating the response” to
20 each interrogatory, and “[a]ll documents consulted, used, or reviewed” in answering each
21 interrogatory. Dkt. No. 76-1 at 33–34. While the Court does not agree with Bosley that this
22 interrogatory should be counted as nearly three hundred interrogatories (*id.* at 34), the Court does
23 find interrogatory 14 should be considered 13 separate interrogatories because identifying the
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1 requested information for each interrogatory is a discrete inquiry that is separate from the inquiry
2 for other interrogatories.

3 Lastly, interrogatory 15 asks Bosley to identify each potential fact witness and each expert
4 witness, and to identify each opinion the expert will testify on and the basis for each opinion. Dkt.
5 No. 76-1 at 67. The Court agrees with Bosley that this request asks for two distinct categories of
6 information: fact witnesses and expert witnesses and their opinions. Accordingly, interrogatory
7 15 should count as two interrogatories.

8 If Bosley has not already done so, Bosley is ordered to amend its answers to interrogatories
9 10, 11, and part of 12 based on this order by September 13, 2024. To the extent that Bosley has
10 not amended its answers based on the second amended complaint (Dkt. No. 69), as promised (Dkt.
11 No. 76 at 3), this amendment shall also include those changes. Upon this amendment, the parties
12 are instructed to meet and confer again regarding any outstanding disputes. As noted above, if
13 issues remain, either party may file a discovery motion on any of the outstanding discovery issues
14 without further use of the Court's pre-filing conference procedure.

15 Dated this 16th day of August, 2024.

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18 Kymberly K. Evanson
19 United States District Judge
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